

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

RUBIE'S COSTUME COMPANY, INC.,
a New York corporation

Plaintiff,

v.

YIWU HUA HAO TOYS CO., LTD.; LI
CHEN; TANG LI QUN; LI ZHOU;
XIANG YUN; ZENG LI; OFER
MANDLER; SHANJU LEI; AD HOC
PRODUCT SOURCING & TRADING
COMPANY LTD.; WEN TING XIE;
JAMES JACKSON; JUNHUI JIANG;
JOHN GAO; GUOFEN LUO; KUN
HUANG; and JOHN DOES 1-13,
currently unknown individuals and
entities,

Defendants.

Case No. 2:18-cv-01530-RAJ

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR ALTERNATIVE
SERVICE UNDER FED. R. CIV. P.
(f)(3)**

This matter comes before the Court on Plaintiff's Motion for Alternative Service.
Dkt. # 20. For the reasons discussed below, this motion is **GRANTED** in part and
DENIED in part.

I. BACKGROUND

Plaintiff Rubie's Costume Company, Inc. ("Plaintiff") is a New York-based costume company that designs and manufactures costumes including a "highly-recognizable and very popular full-body Inflatable T-Rex Costume." Dkt. # 17 (Amended Complaint) at ¶ 1. The costume was first published on July 31, 2015 and is registered with the United States Copyright Office (VA 2-108-559). *Id.* at ¶¶ 35–36. The costume is sold through various distribution channels including "online platforms and traditional brick and mortar stores" throughout the United States (and the world). *Id.* at ¶ 37.

Defendant Yiwu Hua Hao Toys Co., Ltd. ("Yiwu Hua Hao") is a Chinese company that allegedly manufactures infringing T-Rex costumes. Dkt. # 17 at ¶¶ 3–4. According to Plaintiff, Yiwu Hua Hao manufactures two versions of the Inflatable T-Rex costume, both of which "copy original graphical and sculptural features" from Plaintiff's costume. *Id.* at ¶ 43. Yiwu Hua Hao sells these allegedly infringing costumes using an Amazon seller account, Yiwu Hua Hao Toys Co. Ltd. (A28HXIHWFH6GG1), along with the other defendants. *Id.* at ¶ 45.

On October 18, 2018, Rubie's brought suit against Trend Nation¹ and Yiwu Hua Hao Toys, along with several other previously unnamed defendants, under the Federal Copyright Act. Dkt. # 1. Plaintiff successfully served Defendant Trend Nation but was unable to serve the remaining defendants. Dkt. # 20 at 4. After contacting Amazon, Plaintiff was able to obtain contact information for all of the defendants in this action (and the other two related actions²), although a majority of the addresses were located in China. *Id.* Plaintiff subsequently attempted to serve summonses and complaints upon

¹ On August 28, 2019 the Court granted Trend Nation's motion to dismiss for lack of personal jurisdiction. Dkt. # 21.

² *Rubie's Costume Company v. Luo Li Jiang, et al.*, No. 2:18-cv-01531-RAJ, (the "Jiang Action") and *Rubie's Costume Company v. Zeng Wei Yi*, No. 2:18-cv-01532-RAJ, (the "Yi Action").

1 the thirteen defendants with addresses in the United States. Dkt. # 20 at 4. Of the
2 thirteen defendants, only one defendant was successfully served. *Id.* For many of these
3 defendants, Plaintiff reports that individuals at these addresses informed the process
4 server that they were unfamiliar with Defendants, suggesting that Defendants provided
5 false addresses to Amazon. Dkt. # 20-3 (Roller Decl.), at ¶ 4, Ex. 1.

6 Plaintiff now asks the Court for leave to serve the remaining Defendants by e-mail
7 and through their Amazon.com storefronts. Dkt. # 20.

8 **II. LEGAL STANDARD**

9 Federal Rule of Civil Procedure 4(h)(2) allows service of process upon a foreign
10 corporation to be effected “in any manner prescribed for individuals by subdivision [4](f)
11 except personal delivery.” Rule 4(f) authorizes several methods for service of process
12 including, an “internationally agreed means of service,” or, if there is no “internationally
13 agreed means,” a method that is reasonably calculated to give notice. Fed. R. Civ. P.
14 4(f).

15 **III. DISCUSSION**

16 Under Fed. R. Civ. P. 4(f)(3), courts have discretion to allow service by alternative
17 means provided the court’s method of service comports with constitutional notions of due
18 process and is not prohibited by international agreement. *Rio Properties, Inc. v. Rio Int’l*
19 *Interlink*, 284 F.3d 1007, 1016 (9th Cir.2002). A method of service comports with due
20 process if it is “reasonably calculated, under all the circumstances, to apprise interested
21 parties of the pendency of the action and afford them an opportunity to present their
22 objections.” *Rio Properties, Inc.*, 284 F.3d at 1016, 1017 (quoting *Mullane v. Cent.*
23 *Hanover Bank & Trust*, 339 U.S. 306, 314 (1950)). Courts have authorized numerous
24 methods of alternative service under Rule 4(f)(3), including service by publication, mail,
25 and e-mail. *Id.* at 1016 (citations omitted). Parties are not required to attempt service by
26 other methods before petitioning the court for alternative service of process, instead it is
27 within the discretion of the district court to determine “when the particularities and
28 necessities of a given case require alternate service of process under rule 4(f)(3).” *Id.* at

1 1016.

2 Courts consider a variety of factors when evaluating whether to grant relief under
3 Rule 4(f)(3) including whether the plaintiff identified a physical address for the
4 defendant, whether the defendant was evading service of process, and whether the
5 plaintiff had previously been in contact with the defendant. *See e.g. Rio Properties, Inc.*
6 *v. Rio Int'l Interlink*, 284 F.3d 1007 (9th Cir.2002) (authorizing alternative service where
7 the plaintiff made multiple good faith yet unsuccessful efforts to serve the defendant and
8 the defendant was “striving to evade service of process.”); *Liberty Media Holdings, LLC*
9 *v. Vinigay.com*, 2011 WL 810250 (D. Ariz. Mar. 3, 2011) (allowing alternative service by
10 e-mail where the plaintiff was unable to identify a physical address for the defendant and
11 the plaintiff had previously communicated with the defendant by e-mail); *Lyman Morse*
12 *Boatbuilding Co. v. Lee*, 2011 WL 52509 (D. Me. Jan. 6, 2011) (allowing alternative
13 service by e-mail where the plaintiff had previously attempted to serve the defendant by
14 mail, the plaintiff was in e-mail communication with the defendant, and the defendant
15 had instructed his attorney not to accept service on his behalf).

16 The advisory committee notes to Rule 4 also provide several examples of situations
17 that might merit alternative means of service such as cases of urgency or the failure of a
18 country’s Central Authority to effect service within the six-month period provided by the
19 Hague Convention. *See* Fed.R.Civ.P. 4 Advisory Committee’s Notes (1993 Amendment,
20 subdivision (f)). The advisory notes caution courts to select a method of service that is
21 “consistent with due process and minimizes offense to foreign law.” *Id.*

22 As an initial matter, the Court notes that China is a signatory to the Hague
23 Convention on the Service Abroad of Judicial and Extrajudicial Documents (“Hague
24 Convention”). *See* Contracting Parties, Hague Conference on Private International Law,
25 <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17> (last visited Nov.
26 22, 2019). The Hague Convention requires signatory countries to establish a Central
27 Authority to receive requests for service of documents from other countries and to serve
28 those documents by methods compatible with the internal laws of the receiving state. *See*

1 *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698–99 (1988).

2 Service through a country’s Central Authority is the principal means of service
3 under the Hague Convention. Article X of the Convention preserves the ability of parties
4 to effect service through means other than a recipient-nation’s Central Authority as long
5 as the recipient-nation has not objected to the specific alternative means of service used.
6 See Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents,
7 art. 10, Feb. 10, 1969, 20 U.S.T. 361. In signing the Convention, China expressly
8 rejected service through means enumerated in Article X, including service through postal
9 channels and through its judicial officers. See Contracting Parties, Hague Conference on
10 Private International Law, [https://www.hcch.net/en/instruments/conventions/status-](https://www.hcch.net/en/instruments/conventions/status-table/?cid=17)
11 [table/?cid=17](https://www.hcch.net/en/instruments/conventions/status-table/?cid=17) (last visited Nov. 22, 2019).

12 Despite China’s objection to Article X, numerous courts have held that Article X
13 does not prohibit service by electronic communication. See, e.g., *Microsoft Corp. v.*
14 *Goldah.com Network Tech. Co., Ltd.*, No. 17-CV-02896-LHK, 2017 WL 4536417, at *4
15 (N.D. Cal., Oct. 11, 2017) (holding service by e-mail did not violate Article X); *Microsoft*
16 *Corp. v. Gameest Int’l Network Sales Co.*, No. 17-CV-02883-LHK, 2017 WL 4517103,
17 at *2-*3 (authorizing service by email despite China’s objection to Article X); *Fourte*
18 *Int’l Ltd. BVI v. Pin Shine Indus. Co.*, No. 18-cv-00297-BAS-BGS, 2019 WL 246562, at
19 *2-*3 (S.D. Cal., Jan. 17, 2019) (rejecting argument that China’s objection to service by
20 postal channel precluded electronic service); *Williams-Sonoma, Inc. v. Friendfinder, Inc.*,
21 No. C 06-06572 JSW, 2007 WL 1140639, at *2 (N.D. Cal., Apr. 17, 2017)
22 (distinguishing email service from postal mail and concluding that service by email to
23 parties located in countries that have objected to Article X was permissible).

24 In addition, within the Ninth Circuit, multiple courts have allowed alternative
25 service by electronic communication to defendants located in China. See *MultiFab, Inc.*
26 *v. ArlanaGreen.com*, No. 2:15-CV-0066-SMJ, 2015 WL 12880504, at *3–*4 (E.D.
27 Wash., Mar. 13, 2015) (allowing service via e-mail on defendant located outside the
28 United States); *Juicero, Inc. v. Itaste Co.*, No. 17-cv-01921-BLF, 2017 WL 3996196, at

1 *3 (N.D. Cal., June 5, 2017) (authorizing e-mail service and service through Facebook
2 account on Chinese defendants in infringement case); *Chanel, Inc. v. Lin*, No. C-09-
3 04996 JCS, 2010 WL 2557503, at *3 n.3 (N.D. Cal., May 7, 2010), *report and*
4 *recommendation adopted*, No. C-09-04996 SI, 2010 WL 2557561 (N.D. Cal., June 21,
5 2010) (authorizing alternative service of process on Chinese defendants via e-mail
6 pursuant to Fed. R. Civ. P. 4(f)(3) in trademark action); *Gucci Am., Inc. v. Wang*
7 *Huowing*, No. C-0905969 JCS, 2011 WL 31191, at *3 (N.D. Cal., Jan. 3, 2011), *report*
8 *and recommendation adopted*, No. C-09-05969 CRB, 2011 WL 30972 (N.D. Cal., Jan. 5,
9 2011) (same); *Magpul Indus. Corp. v. Zejun*, No. C 14-01556 JSW, 2014 WL 7213344,
10 at *2 (N.D. Cal., Dec. 16, 2014) (complaint served on Chinese counterfeiting defendant
11 via e-mail); *Keck v. Alibaba.com, Inc.*, No. 17-cv-05672-BLF, 2018 WL 3632160, at
12 *3–*4 (N.D. Cal., July 31, 2018) (authorizing service of process through AliExpress.com
13 online messaging system). As a result, the Court finds that Plaintiff’s proposed methods
14 of alternative service are not expressly prohibited by international agreement.

15 Even if alternative service is permitted by Rule 4(f)(3), however, the Court must
16 still consider whether the proposed method of service comports with due process. *Rio*
17 *Props.*, 284 F.3d at 1016. Here, the Court finds that service by e-mail and through
18 Defendants’ electronic storefronts is permitted as to some Defendants given the
19 circumstances of this case, specifically, where Plaintiff has been unable to ascertain
20 physical addresses for service after a reasonable effort or where there is evidence
21 defendants are attempting to evade service. *See* Dkt. # 20-2 at ¶¶ 7, 8, 12, 13, and 16.
22 Accordingly, Plaintiff’s Motion is GRANTED as to Defendants Yiwu Hua Hao Toys
23 Co., Ltd., Li Chen, Ofer Mandler, Shanju Lei, and James Jackson.

24 For those remaining defendants where Plaintiff has identified physical addresses in
25 China, the Court DENIES Plaintiff’s Motion. From the record, it does not appear that
26 Rubie’s has attempted service on these defendants at all. In addition, Plaintiff has failed
27 to demonstrate that these defendants are elusive or otherwise striving to evade service of
28 process. *Rio Properties*, at 1014 (plaintiff must demonstrate that the facts and

circumstances of the present case necessitated the district court's intervention for alternative service of process).

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS in part** and **DENIES in part** Plaintiff's Motion for an Order Directing Alternative Service of Process under Rule 4(f)(3) of the Federal Rules of Civil Procedure. Dkt. # 20. Plaintiff has leave under Federal Rule of Civil Procedure 4(f)(3) to serve Defendants Yiwu Hua Hao Toys Co., Ltd., Li Chen, Ofer Mandler, Shanju Lei, and James Jackson with the First Amended Complaint, the Summons, and this Order by the following unique email addresses and Amazon Seller Accounts as indicated below:

Defendant	Amazon.com Seller Account	Email Address
Yiwu Hua Hao Toys Co., Ltd.	"Yiwu Huahao Toys Co. Ltd." (A28HXIHWFH6GG1)	edwin@huahaotoys.net
Li Chen	"Hugallur-US" (A1BVUFNRB02KXK)	ladykeramz@yahoo.com
Ofer Mandler	"CommercialProducts" (A4CK52F84GSEF)	mike.homeproducts@gmail.com
Shanju Lei	"iFigure" (A30YGBPACVGCY9)	figure@yeah.net
James Jackson	"JM Goodies" (A1NYKB7FGC8DNW)	support@taxmonkey.com

Plaintiff has **14 days** from the date of this Order to serve the Defendants in accordance with this Order.

DATED this 25th day of November, 2019.



The Honorable Richard A. Jones
United States District Judge